REMARKS

I. INTRODUCTION

Claims 39, 41 and 42 have been amended to more particularly point out and distinctly claim the subject matter of the invention. Thus, claims 33 - 42 are pending in this application. No new matter has been added. In view of the above amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

II. THE OBJECTION TO THE SPECIFICATION SHOULD BE WITHDRAWN

The Examiner has objected to the specification under 37 C.F.R. 1.75(d)(1) and MPEP § 608.01(o) as failing to provide proper antecedent basis for the claim term, "naturally occurring body orifice."

It is respectfully submitted that the specification contains clear support and antecedent basis for the term "naturally occurring body orifice" appearing in the claims. In the response to final Office Action filed September 4, 2003, the Applicant amended the specification to incorporate subject matter from a patent which was incorporated by reference in the current application. Specifically, the applicant added to the specification a paragraph describing the structure corresponding to this term. The amended portion of the specification states that the "endoscope is inserted into a body orifice to locate a lesion, for example, in a tubular organ under visual observation (usually insufflating the organ)." It is respectfully submitted that those skilled in the art will understand that the description in the specification of a body orifice refers specifically to a naturally occurring body orifice and that this description provides clear antecedent basis for the claim term "naturally occurring body orifice" as recited in claim 33. Thus, it is respectfully submitted that the terms used in the specification provide clear support for the term "naturally occurring body orifice" as recited in claim 33, and that this claim fully complies with 37 C.F.R. 1.75(d)(1) and MPEP § 608.01(o).

III. THE OBJECTIONS TO THE CLAIMS SHOULD BE WITHDRAWN

The Examiner has objected to claims 41 and 42 as including informalities. In view of the above amendments, it is respectfully submitted that the Examiner's concerns have been addressed and that this rejection should be withdrawn.

IV. THE REJECTIONS UNDER 35 U.S.C. §103 SHOULD BE WITHDRAWN

Claims 33-36 and 40 stand rejected under 35 U.S.C. § 103(a) as unpatentable over McGuckin, Jr. (U.S. Patent 5,868,760) in view of Murphy-Chutorian (U.S. Patent 5,891,133). Claim 37 stands rejected under 35 U.S.C. § 103 as unpatentable over McGuckin, Jr. in view of Murphy-Chutorian in further view of U.S. Patent 4,830,849 to Osterholm. Claims 38-39 stand rejected under 35 U.S.C. § 103 as unpatentable over McGuckin, Jr. in view of Murphy-Chutorian in further view of U.S. Patent 5,485,839 to Aida et al. Claims 41 and 42 stand rejected under 35 U.S.C. § 103 as unpatentable over McGuckin, Jr. in view of Murphy-Chutorian in further view of U.S. Patent 6,214,018 to Kreizman et al.

Claim 33 recites a tissue resectioning system, comprising "a resection head mounted at a distal end of an elongate flexible body, *the resection head including a marker thereon* wherein, when in an operative position, the resection head is located within a body lumen with the elongate flexible body extending through the body lumen from a naturally occurring body orifice" and "*an imager which remains outside the patient's body, the imager generating image data of a selected region within the patient's body including a predetermined portion of tissue marked for resection*" in combination with "an image processing unit analyzing the image data to define a region of tissue to be resectioned and to locate the marker" and "*a control unit controlling the resection head based on the defined region of tissue and the location of the marker to resect the region of tissue.*"

McGuckin, Jr. describes a method and apparatus for endoluminally resecting tissue. A tubular member 16 is connected to an operating capsule 12 at a distal end thereof, and a operator control module 14 at a proximal end thereof. (See McGuckin, Jr., col. 11, lines 58-67). An endoscope 216 is passed through the tubular member 16 from a control segment 222 to an opening in the operating capsule 12. (See McGuckin, Jr., col. 12, lines 9-20). The control segment 222 includes an eyepiece 224, an input light source 226 and fiberoptics extending from the eyepiece to a distal tip of the endoscope 216 in the operating capsule 12. (See McGuckin, Jr., col. 12, lines 15-20). The fiberoptics provide a physician with a view of a path through the colon to a site where the tissue to be resected is located. (See McGuckin, Jr., col. 12, lines 38-44).

Although McGuckin, Jr. states that the system is not limited to any particular type of diagnostic imaging guidance, no further description of guidance systems other than a vision system at the distal end of an endoscope is provided. (See McGuckin, Jr., col. 3, lines 59-65). McGuckin, Jr. describes various components of the vision system of the resectioning apparatus in detail. For example, the eyepiece 224, the input light source 226, and fiberoptic connectors that provide the physician with a view forward of the resectioning device are shown. (See McGuckin, Jr., col. 12, lines 16-46. However, McGuckin, Jr. includes no showing or suggestion of any control of a resection head based on any imaging data besides manual control based on vision from the distal end of the endoscope.

Furthermore, as the Examiner has noted, McGuckin, Jr. does not disclose or suggest the use of a resection head with a marker thereon. Without disclosing the marker, it follows that McGuckin, Jr. also neither shows nor suggests "an image processing unit analyzing the image data...to locate the marker" and "a control unit controlling the resection head based on...the location of the marker to resect the region of tissue," as recited in claim 33. The Examiner has attempted to cure the deficiencies of McGuckin, Jr. with the disclosure of Murphy-Chutorian. Murphy-Chutorian discloses a device for performing intra-coronary laser-assisted transmyocardial revascularization (ITMR). The ITMR device utilizes a laser delivery means 162 to create channels 210 from the epicardial to the endocardial portions of the heart, allowing blood

to perfuse therethrough. (See Murphy-Chutorian, col. 12, lines 7-29).

Initially, it should be noted that the device described in Murphy-Chutorian does not perform resection of tissue. The laser delivery means 162 is simply meant to create channels in the myocardium, and, at no point, suggests that the device could be used to resect tissue. Thus, a resection head at a distal end of an elongate flexible body is not disclosed or suggested. Furthermore, the device of Murphy-Chutorian is not introduced into the body via a naturally occurring body orifice. Rather the device is inserted into the femoral artery after a surgeon has gained access to such "using a standard needle to probe and find the femoral artery." (See Murphy-Chutorian, col. 10, lines 6-7). Also, the device of Murphy-Chutorian contains a visualization means located on the distal end of a catheter 140 that houses the laser delivery means 162. Thus, the visualization means is not an imager which remains outside of a patient's body. Thus, it is respectfully submitted that Murphy-Chutorian does not disclose or suggest a device inserted into the body via a naturally occurring body orifice, a device for resecting tissue or an imager which remains outside the body, as recited in claim 33 and clearly neither shows nor suggests "*a control unit controlling the resection head based on the defined region of tissue and the location of the marker to resect the region of tissue*," where the region of tissue is defined based on imaging data obtained from a device outside the body.

Accordingly, for at least the reasons described above, the Applicant respectfully submits that neither McGuckin, Jr. nor Murphy-Chutorian, either alone or in combination, either shows or suggests a tissue resection system comprising: "a resection head located within a body lumen with an elongate flexible body extending through the body lumen from a naturally occurring body orifice" in combination with "an imager which remains outside the patient's body generating image data of a selected region within the patient's body including a predetermined portion of tissue marked for resection and an image processing unit analyzing the image data to define a region of tissue to be resectioned and to locate the marker" and "a control unit controlling the resection head based on the defined region of tissue and the location of the marker to resect the region of tissue," as recited in claim 33.

Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claim 33 under §103. Because claims 34-42 depend from and, therefore, include all of the limitations of claim 33, it is respectfully submitted that these claims are also allowable.

V. CONCLUSION

It is respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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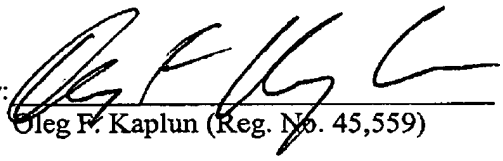
By: 
Oleg F. Kaplun (Reg. No. 45,559)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, New York 10038
Tel: (212) 619-6000
Fax: (212) 619-0276